

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 25, 2019

SEAN F. McAVOY, CLERK

DUANE WARD, an individual; and
RACHELLE WARD, an individual;

Plaintiff,

v.

COUNTY OF BENTON, an entity;
CHILD PROTECTION SERVICES, an
entity; CHILD WELFARE SERVICES,
an entity; CHILDREN'S
ADMINISTRATION, an entity;
SEATTLE CHILDREN'S HOSPITAL,
an entity; CHILDREN'S
PROTECTION PROGRAM, an entity;
PROTECTION PROGRAM SCAN
TEAM, an entity; DEPARTMENT OF
CHILD, YOUTH, AND FAMILY, an
entity; DEPARTMENT OF SOCIAL
AND HEALTH SERVICES, an entity;
CITY OF SEATTLE, an entity;
SEATTLE POLICE DEPARTMENT,
an entity; CITY OF RICHLAND, an
entity; ANA BROWN, an individual;
ERIC CHOW, an individual; MARCO
DEOCHOA, an individual; JENNIFER
GOURLEY, an individual; KEVIN
SHARP-SMITH, an individual;
SHANNON SULLIVAN, an individual;
DAMON JANSEN, an individual and
official capacity; HONORABLE JERRI
POTTS, individual and official
capacity; KATHY LUND, an
individual; LESLIE SMITH, individual

No. 4:19-cv-05014-SMJ

**ORDER GRANTING LEAVE TO
FILE SECOND AMENDED
COMPLAINT**

1 and official capacity; LAUREN
2 TRUSCOTT, individual and official
3 capacity; REBECCA WIESTER,
4 individual and official capacity; ROSS
5 HUNTER, official capacity; JODY
6 BECKER, individual capacity;
7 JENNIFER STRUS, individual
8 capacity; and DOES 1–100
9 INCLUSIVE;

10 Defendants.

11 Before the Court, without oral argument, is Plaintiff Duane and Rachelle
12 Ward's construed motion for leave to file a second amended complaint, ECF No.
13 21. Upon filing the received proposed second amended complaint, the Court
14 permitted Defendants to file objections to Plaintiffs' motion for leave. Defendants
15 Seattle Children's Hospital, Ana N. Brown, Eric Chow, and Rebecca Wiester jointly
16 request that the motion be denied as it pertains to any claims against them
17 specifically. ECF No. 35. No other Defendants oppose the motion. Having reviewed
18 the responses and the file in this matter, the Court is fully informed and grants the
19 motion.

20 Pursuant to Federal Rule of Civil Procedure 15(a)(2), “[A] party may amend
its pleading only with the opposing party’s written consent or with the court’s leave.
The court should freely give leave when justice so requires.” This policy is “to be
applied with extreme liberality.” *Owens v. Kaiser Found. Health Plan, Inc.*, 244
F.3d 708, 712 (9th Cir. 2001) (quoting *Morongo Band of Mission Indians v. Rose*,

ORDER GRANTING LEAVE TO FILE SECOND AMENDED COMPLAINT -

1 893 F.2d 1074, 1079 (9th Cir. 1990)).

2 In *Foman v. Davis*, 371 U.S. 178 (1962), the Supreme Court offered the
3 following factors a district court should consider in deciding whether to grant leave
4 to amend:

5 In the absence of any apparent or declared reason—such as undue
6 delay, bad faith or dilatory motive on the part of the movant, repeated
7 failure to cure deficiencies by amendments previously allowed, undue
prejudice to the opposing party by virtue of allowance of the
amendment, futility of amendment, etc.—the leave sought should, as
the rules require, be “freely given.”

8 *Id.* at 182; *see also Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990).

9 Here, the case is still in its early stages; the Court has not yet held a
10 scheduling conference¹ or issued a scheduling order. There does not appear to be
11 any bad faith or dilatory motive on Plaintiffs’ part, nor would there be undue
12 prejudice to Defendants. While Defendants Seattle Children’s Hospital, Ana N.
13 Brown, Eric Chow, and Rebecca Wiester argue that amendment will be futile as it
14 pertains to them, the Court shall not entertain a piecemeal amendment of the
15 complaint, nor will it delve deeply into the merits of the existing claims at this time.
16 Thus, the Court freely gives leave to amend, although Plaintiffs are cautioned that
17 future motions to amend will be strictly scrutinized for the exercise of due diligence.

18 Accordingly, **IT IS HEREBY ORDERED:**

20 ¹ The Court will not hold a scheduling conference in this matter until all responsive
pleadings have been filed or resolved.

1. Plaintiff's construed motion for leave to file a second amended complaint, **ECF No. 21**, is **GRANTED**.
 2. The Clerk's Office is **DIRECTED** to **RE-FILE** the proposed second amended complaint, originally filed at ECF No. 21.
 3. The Clerk's Office may issue summonses relating to the second amended complaint.
 4. The Clerk's Office is **DIRECTED** to **AMEND** the caption as listed on the first page of this Order.
 5. An amended complaint supersedes the original complaint in its entirety, *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990), which renders a motion to dismiss moot, *Williamson v. Sacramento Mortg., Inc.*, No. CIV. S-10-2600 KJM, 2011 WL 4591098, at *1 (E.D. Cal. Sept. 30, 2011). Accordingly, the Court **DENIES AS MOOT** the pending motions to dismiss, **ECF Nos. 7, 9, & 16**.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and
de copies to all counsel.

DATED this 25th day of June 2019.

Salvador Mendoza Jr.
SALVADOR MENDEZA, JR.
United States District Judge